

May 3, 2007

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the 2004-2005
Administrative Review of Certain Cased Pencils from the People's
Republic of China

SUMMARY

We have analyzed the case and rebuttal briefs of interested parties in the administrative review of the antidumping duty order on certain cased pencils from the People's Republic of China (PRC). As a result of our analysis, we have made certain changes in the margin calculations. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is a complete list of the issues for which we received comments and rebuttal comments by parties:

- Comment 1: Whether the Department Used the Appropriate Size of Lumber as a Surrogate for Pencil Slats
- Comment 2: Whether the Department Should Adjust the Pencil Slat Surrogate Value to Account for Wood Loss
- Comment 3: Whether the Department Should Use the Price of Kiln-Dried or Green Lumber to Value Pencil Slats
- Comment 4: Whether the Department Used the Appropriate Surrogate Financial Ratios
- Comment 5: Whether the Department Properly Accounted for Labor-Related Expenses in Calculating Financial Ratios
- Comment 6: Whether the Department Used an Appropriate Labor Rate
- Comment 7: Whether the Department Used an Appropriate Surrogate Value for Brokerage and Handling Services
- Comment 8: Whether the Department Used an Appropriate Surrogate Value for Paper Wrap
- Comment 9: Selection of the Appropriate Rate to Assign to a Separate Rate/Section A Respondent

BACKGROUND

On February 1, 2006, in response to requests from interested parties, the Department of Commerce (the Department) initiated this administrative review with respect to Beijing Dixon Stationery Company Ltd. (Dixon), Orient International Holding Shanghai Foreign Trade Co., Ltd. (OIHSFTC), Shandong Rongxin Import & Export Co., Ltd., Tianjin Custom Wood Processing Co., Ltd. (Tianjin) and China First Pencil Company, Ltd. and its affiliates China First Pencil Fang Zheng Co., Shanghai First Writing Instrument Co., Ltd., Shanghai Great Wall Pencil Co., Ltd., (collectively “CFP”) and Shanghai Three Star Stationery Industry Corp. (Three Star).¹ On August 10, 2006, the Department rescinded the instant review with respect to OIHSFTC and Tianjin.² The period of review (POR) is December 1, 2004, through November 30, 2005. The merchandise covered by this review is certain cased pencils as described in the “Scope of the Order” section of the Federal Register notice, which accompanies this memorandum.

On December 7, 2006, the Department published the preliminary results of this review in the Federal Register.³ The following events occurred after the Department published the Preliminary Results. In response to a supplemental questionnaire, CFP-Three Star submitted additional factual information to the Department on December 15, 2006. In response to an invitation to comment on our preliminary results of review, the petitioners,⁴ CFP-Three Star, and Dixon submitted case briefs to the Department on January 22, 2007. The petitioners and CFP-Three Star submitted rebuttal briefs to the Department on January 29, 2007. During January 2007 the petitioners, CFP-Three Star, and Dixon filed additional surrogate information with the Department. On February 2, 2007, the Department gave interested parties an opportunity to comment on the most recently calculated wage rate posted on the Department’s website. CFP-Three Star responded to this opportunity by submitting comments to the Department on February 7, 2007.

¹ See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 71 FR 5241 (February 1, 2006). Consistent with prior reviews in this proceeding, the Department has treated CFP and Three Star as a single entity (CFP-Three Star). See e.g., Certain Cased Pencils from the People’s Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 67 FR 48612, 48613 (July 25, 2002). This treatment has been upheld by the Court of International Trade (CIT). See China First Pencil Co. Ltd. v. United States, 427 F. Supp 2d 1236 (March 7, 2006).

² See Certain Cased Pencils from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review, 71 FR 47169 (August 16, 2006).

³ See Certain Cased Pencils from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review, 71 FR 70949 (December 7, 2006) (Preliminary Results).

⁴ The petitioners include Sanford L.P., Musgrave Pencil Company, RoseMoon Inc., and General Pencil Company (collectively “the petitioners”).

CHANGES SINCE THE PRELIMINARY RESULTS

Based on our analysis of the comments received, we made the following changes in calculating dumping margins: (1) we adjusted the surrogate value for slats to reflect wood loss in producing slats from lumber; (2) we valued labor using the most recently calculated wage rate found on the Department's website; and (3) we valued brokerage and handling services using a different surrogate source. In addition, based on the additional information provided by CFP-Three Star in its December 15, 2006 submission, we recalculated supplier distances for foil and erasers. For further details, see the "CFP-Three Star Calculation Memorandum for Final Results of Administrative Review" (Calculation Memorandum), dated May 7, 2007.

DISCUSSION OF THE ISSUES

Comment 1: Whether the Department Used the Appropriate Size of Lumber as a Surrogate for Pencil Slats

During the POR, CFP-Three Star produced pencils from pencil slats (wooden planks approximately 0.18 of an inch thick by 0.75 of an inch to 2.74 inches wide by 7.2 inches long), which it purchased from a PRC supplier. In the Preliminary Results, the Department valued pencil slats using the price per-unit⁵ of one inch thick lumber (surrogate prices for the exact input used, pencil slats, are not on the record of this review).

The petitioners argue that the Department erred in selecting one inch thick lumber as a surrogate for pencil slats because the record of this review demonstrates that lumber greater than one inch thick is used in the PRC to produce slats. While the respondent did not identify the size of lumber used by its slat supplier, the petitioners note that Mr. Qin Xingdong of Shanghai Wei Qin Industrial Co., Ltd. and Mr. Carlos Fairbanks, President and CEO of Products & Ventures International, Inc. (companies that produce slats in the PRC) stated for the record that the lumber used to produce slats in the PRC is three inches thick.⁶ The petitioners further point to Mr. Carlos Fairbanks' statement that three inch thick lumber is the industry standard for slat producers, while one inch thick lumber represents only a minor portion of the slat production in the PRC. Also, the petitioners cite a statement by Mr. James Haas, President of Sierra Cedar Products, LLC, a supplier of lumber, to the pencil/pencil slat industry, that three inch thick lumber, rather than one inch thick lumber, is used by the Chinese slat industry.⁷ Finally, the petitioners note that they submitted a videotape of the slat production process, corroborating Mr.

⁵ The per-unit price is expressed in MBF (MBF = 1,000 board feet). One board foot is a section of wood one foot long, one foot wide, and one inch thick.

⁶ See the statements of Mr. Qin Xingdong and Mr. Carlos Fairbanks in Attachments A and B of the petitioners' January 5, 2007 (mistakenly dated 2006) surrogate value submission, respectively.

⁷ See the statement of Mr. James A. Haas in Attachment C of the petitioners' January 5, 2007, surrogate value submission.

Fairbanks' and Mr. Haas' claims that pencil slats cannot be made with lumber of less than three inches thick.⁸

Although the Department rejected the petitioners' arguments for the use of three inch thick lumber as the surrogate for slats in prior segments of this proceeding, the petitioners ask the Department to reconsider its position on this issue. The petitioners note that, in the past, the Department valued pencil slats using the unit price of one inch thick lumber because: (1) it is close in size to a slat; (2) the record did not indicate the thickness of the lumber used in producing the slats purchased by the respondents; and (3) its use was judicially approved in Writing Instrument Mfrs. Ass'n, Pencil Section v. United States, 984 F. Supp. 629, 644 (1997) (Writing Instrument Mfrs.). The petitioners maintain, however, that both one and three inch thick lumber differ in size from pencil slats in terms of length (lumber may be multiple times the length of slats) and thickness (one and three inch thick lumber are substantially thicker than slats which are approximately 0.18 of an inch thick). Thus, the petitioners argue that the notion that one inch thick lumber somehow resembles a slat more closely than does three inch lumber is belied by the lumber dimensions. Moreover, the petitioners contend that the Department's use of one inch thick lumber as a surrogate for slats is inconsistent with its recognition that lumber is an input material used to make slats. According to the petitioners, the surrogate for slats should be based on the input material from which slats are made. Further, in light of the evidence on the record of this review, which, petitioners contend, differs from the records of prior segments of this proceeding, the petitioners claim the Department should reexamine this issue. Nevertheless, because the thickest lumber for which there is a price on the record is 2.25 inch thick lumber, not three inch lumber, the petitioners request that the Department use the unit price of 2.25 inch thick lumber as the surrogate value for pencil slats.

CFP-Three Star contends that the petitioners continue to confuse the factor of production it purchases, namely slats, with the input used by its slat supplier, which is blocks of wood.⁹ According to CFP-Three Star, the petitioners are wrong in asserting that a one-inch thick board does not bear a closer resemblance to a slat (which is approximately one-quarter inch thick) than does a three inch thick beam (CFP-Three Star notes that slats are even much thinner than the one inch thick lumber that has been used as a surrogate in this proceeding). Further, while the petitioners contend that one inch thick lumber cannot be used to make pencil slats, CFP-Three Star notes that the petitioners' own video and an additional statement of Mr. James Haas,¹⁰ reveal that it is not uncommon for Chinese producers to use smaller-sized lumber, such as one inch

⁸ See "Slat Production in China" videos attached to the petitioners' January 5, 2007, submission.

⁹ The process of producing pencil slats from logs involves cutting logs into long boards (i.e., lumber). The lumber is then cut into shorter boards called blocks. Pencil slats are cut from the blocks. See Attachment B of the petitioners' January 5, 2007, submission.

¹⁰ See "Additional Statement of James A. Haas," attached to CFP-Three Star's January 22, 2007, submission.

thick lumber, to produce slats.¹¹ Additionally, according to CFP-Three Star, the petitioners' video shows that Chinese slat producers use every single scrap of wood to produce slats, not just perfect blocks of wood such as the lumber serving as the surrogate for slats. Thus, CFP-Three Star argues that applying the petitioners' approach would result in a gross misrepresentation of the true surrogate cost of Chinese slats, and would overstate the amount of wood loss relevant to the respondents.

Moreover, CFP-Three Star argues that the petitioners' position not only ignores the fact that it does not engage in the production of slats from logs, but also the well-established and court-sanctioned approach of using one inch thick wood as a surrogate for pencil slats. See Writing Instrument Mfrs., 984 F. Supp. at 644 stating “{t}he Court finds that Commerce’s use of the {one} inch basswood value furthers the object of determining the most accurate and reliable surrogate.” CFP-Three Star asserts that the CIT’s ruling is an acknowledgment that the respondents are purchasing small pieces of sliced wood more akin to a one inch thick piece of lumber than lumber that is the size of a large beam.

Finally, CFP-Three Star maintains that the Department should reject the purported prices submitted by the petitioners for one inch thick and 2.25 inch thick lumber because there is no indication of the source of the purported prices or that the submitted numbers are in fact prices. CFP-Three Star contrasts the petitioners' pricing data with its own data which bear the Hardwood Market Report¹² copyright and were submitted with both sample covers of the weekly publication from which the data were taken, and correspondence with the publisher of the data.¹³

Department’s Position:

We disagree with the petitioners' position. The task at hand is to determine the appropriate surrogate value for pencil slats, not lumber, because the factor of production used by CFP-Three Star is pencil slats. If the Department were attempting to find a surrogate value for the lumber used to make pencil slats, it might be concerned with the size of the lumber used in production since the Department’s practice is to select surrogates that are “as similar as possible to the input for which a surrogate value is needed.”¹⁴ However, here the Department’s objective is to select a surrogate with physical characteristics (e.g., wood type, grade, and thickness) similar to those of pencil slats because that is the input being valued. During the POR, CFP-Three Star purchased

¹¹ See id.

¹² The Hardwood Market Report is a weekly publication that provides benchmark pricing and market commentary on North American hardwood lumber and the hardwood products industry.

¹³ See CFP-Three Star’s November 6, 2006, surrogate value filing.

¹⁴ See Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People’s Republic of China, 62 FR 61964, 61987 (November 20, 1997) (CTL Plate From the PRC).

pencil slats that measure approximately 3/16 of an inch in thickness. Because one inch thick lumber is closer in thickness to the slats purchased by CFP-Three Star than the other lumber for which there are prices on the record, we have continued to value pencil slats using the price of one inch thick lumber.

Our position is consistent with our determinations in prior segments of this proceeding, where the Department consistently rejected the petitioners' argument on the grounds that one inch thick lumber is closer in thickness to the slats purchased by the respondents.¹⁵ Moreover, the Department's finding that one inch thick (4/4) basswood lumber is the appropriate surrogate for slats was also upheld in Writing Instrument Mfrs., 984 F. Supp. at 644, in which the CIT found that ". . . Commerce's use of the 4/4 inch {i.e., one inch thick} basswood value furthers the objective of determining the most accurate and reliable surrogate."

Comment 2: Whether the Department Should Adjust the Pencil Slat Surrogate Value to Account for Wood Loss

In the Preliminary Results, the Department valued the pencil slats purchased by CFP-Three Star using the per-unit price of lumber. The petitioners, however, state that lumber and slats are not the same product but that slats are produced from lumber in a process that results in wood loss,¹⁶ which the Department failed to reflect in the surrogate value for slats used in the preliminary results. The petitioners claim the Department's practice in prior segments of this proceeding was to account for wood lost in producing slats from lumber by adjusting the surrogate price for slats to account for the quantity of lumber needed to produce a given quantity of slats.¹⁷ The petitioners note, however, that CFP-Three Star did not provide a lumber-to-slat yield rate.

¹⁵ See Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 38366 (July 6, 2006), and accompanying Issues and Decision Memorandum (Pencils 2003-2004 Final Results) at Comment 9 ("our objective is to calculate the most accurate surrogate value possible by basing our calculation on identical or most similar materials. {1 inch thick} lumber is closer than both {3 inch thick} lumber and {2.25 inch thick} lumber (in thickness) to the slats purchased by respondents during the POR. . . . {T}hus, based on the facts of this record, for the final results, we have continued to value slats using {1 inch thick} basswood lumber . . ."); see also Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 70 FR 42301 (July 22, 2005), and accompanying Issues and Decision Memorandum at Comment 4 ("{1 inch thick} lumber is closer in thickness to the slats purchased by respondents during the POR. . . . {T}hus, for the final results we have continued to value slats using {1 inch thick} basswood lumber. . .").

¹⁶ See Statement of Mr. Qin Xingdong at Attachment A of the petitioners' January 5, 2007, submission, identifying his company's yield rate in producing slats and the reasons for wood loss in the production process.

¹⁷ See, e.g., Pencils 2003-2004 Final Results and accompanying Issues and Decision Memorandum at Comment 8.

Nevertheless, the petitioners state that in the 2003-2004 antidumping duty administrative review of pencils from the PRC, where the Department was faced with a similar situation, it determined the lumber-to-slat yield rate based on a statement of Mr. Qin Xingdong of Shanghai Wei Qin Industrial Co., Ltd., a Chinese slat producer. Accordingly, the petitioners request that the Department follow the same approach in this review by using the information from Mr. Qin that they supplied in this review to adjust the surrogate value for slats to account for wood loss.

CFP-Three Star states that it does not produce slats; thus, any wood loss incurred in producing slats should not be reflected in its factors of production. Moreover, CFP-Three Star contends that using the yield rate supplied by Mr. Qin would constitute double-counting (as well as adverse facts available) since this rate reflects the wood lost in producing the lumber that is used to make slats, a loss whose cost is already built into the lumber price used as the surrogate value for slats. Further, CFP-Three Star maintains there is no basis for resorting to the use of facts available (or adverse facts available) with respect to the yield rate because necessary information is not missing from the record (the lumber-to-slat yield rate is not necessary in this review), it did not withhold or fail to provide information (the Department never requested that CFP-Three Star provide a lumber-to-slat yield rate), it never impeded the process, and it provided verifiable data.

Finally, CFP-Three Star argues that the Department erred in the Preliminary Results by increasing the surrogate value of slats to account for wood lost in producing pencils from slats. According to CFP-Three Star, it reported the full complement of slats that go into the production process; thus, increasing the reported slat consumption by wood loss overstates the consumption of slats. Therefore, CFP-Three Star requests that the Department not adjust the slat surrogate value to account for wood loss.

Department's Position:

We agree with the petitioners. Throughout this proceeding, the Department has recognized that pencil slats are produced from lumber in a process that results in wood loss.¹⁸ The wood lost while producing pencil slats is a cost that would likely be reflected in the price of the slats if they were purchased in a market economy. Therefore, the market economy surrogate price that we are using to value pencil slats should reflect the cost of the wood lost. Because we are using the price of lumber, a price of an earlier stage product which does not reflect this wood loss, as a

¹⁸ See, e.g., Certain Cased Pencils from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 68 FR 43082 (July 21, 2003) and accompanying Issues and Decision Memorandum at Comment 3 (“{t}he Department recognizes that wood loss will occur in the process of producing a slat from a piece of sawn lumber”) and Remand Determination: Writing Instrument Manufacturers Association, Pencil Section, et al. v. United States (March 22, 1996) (Remand Determination) at 13 (“we find persuasive the petitioners’ arguments that there will be some wood loss in the process of producing a slat from a piece of sawn lumber”).

surrogate value for pencil slats, we need to adjust this price for the wood lost in producing slats from lumber. Thus, in prior segments of this proceeding, we adjusted the lumber price used as a surrogate value for pencil slats to reflect wood lost in producing slats from lumber.¹⁹ In the Preliminary Results, the Department inadvertently failed to account for wood loss when lumber is sliced into slats. We have corrected this oversight in the final results of review.

Because the yield rate of CFP-Three Star's slat producer/supplier is not on the record, we relied upon a yield rate that petitioners obtained from Mr. Qin, an official of a Chinese slat producer.²⁰ We relied upon this yield rate because we have no other information on the record regarding the yield rate experienced when producing slats from lumber. In a prior segment of this proceeding, the Department also relied upon a lumber-to-slat yield rate supplied by domestic interested parties when a respondent's slat producer/supplier did not submit relevant wood loss data.²¹

Moreover, the yield rate supplied by Mr. Qin and used by the Department in these final results does not reflect the wood lost in producing the boards used to manufacture slats. Mr. Qin provided two yield rates: the yield rate his company experienced in cutting boards (planks) from logs and the yield rate his company experienced in producing slats from boards. In these final results of review, the Department adjusted the surrogate value for slats by the boards-to-slats yield rate. Although the boards used by Mr. Qin's company to produce slats may not be identical to the lumber being used as a surrogate, this yield rate is for the production process for which we are seeking a yield rate and it is the only information on the record regarding such a rate.

Lastly, we agree with CFP-Three Star's claim that the Department erred by increasing the surrogate value of slats to account for wood loss in producing pencils from slats. In the Preliminary Results, the Department treated the quantity of slats that CFP-Three Star reportedly consumed in pencil production as the quantity of slats (wood) that was incorporated into the pencils that it produced. To account for slats (wood) lost during production (e.g., through trimming, and grooving) the Department increased the surrogate value of slats by a slat-to-pencil yield rate. However, the record indicates that the consumption quantity reported by CFP-Three Star for slats is the gross quantity of slats that the company placed into pencil production. See CFP-Three Star's May 15, 2006, section D questionnaire response at D-13. Because the gross quantity of slats reflects all of the wood placed into pencil production (the wood lost as well as the wood incorporated into the final product) there is no need to increase the reported consumption quantity of slats to account for wood loss in pencil production. The Department has corrected its error for these final results.

¹⁹ See, e.g., Pencils 2003-2004 Final Results and accompanying Issues and Decision Memorandum at Comment 8 (“{f}or the final results, . . . we will account for wood loss in the slat surrogate value. . .”).

²⁰ See Attachment A of the petitioners' January 5, 2007, submission.

²¹ See Pencils 2003-2004 Final Results and accompanying Issues and Decision Memorandum at Comment 8.

Comment 3: Whether the Department Should Use the Price of Kiln-Dried or Green Lumber to Value Pencil Slats

CFP-Three Star claims the Department erred in using the price of kiln-dried lumber, rather than green lumber, to value pencil slats because record evidence shows that moist lumber (i.e., green lumber) is used to produce slats. Specifically, CFP-Three Star contends that the petitioners' own videos and declarants indicate that the lumber used to produce slats is boiled (to increase its moisture content to avoid wood loss from splitting and cracking when the lumber is sliced into slats).²² Thus, CFP-Three Star argues that the slats resulting from the boiled lumber must be green, undried slats.

Even if those slats are later dried, CFP-Three Star argues that there is nothing to suggest that they are subjected to the more expensive process of kiln drying, as opposed to air-drying. In fact, CFP-Three Star states that the petitioners' video shows a worker stacking slats into tower-like piles for air drying.²³

Moreover, based on the drying times in the "Dry Kiln Operator's Manual,"²⁴ CFP-Three Star estimates that the time required to kiln-dry a pencil slat, which is approximately one-quarter inch thick, is far less than the time required to kiln-dry its surrogate in this case, one inch thick lumber. Given this fact, and the fact that kiln-dried lumber is substantially more expensive than green lumber, CFP-Three Star argues that improperly assigning kiln-dried lumber prices to a green slat would be to its disadvantage. Accordingly, CFP-Three Star urges the Department to value pencil slats using the green lumber prices it submitted to the Department.²⁵

The petitioners request that the Department use, as it has for more than a decade, the price of kiln-dried lumber to value slats because the slats purchased by Chinese pencil factories are kiln dried. The petitioners contend that this approach, of using the surrogate input which most closely resembles the factor of production, comports with the Department's Remand Determination in

²² See the petitioners' January 5, 2007, submission at Attachment A (which contains a description of slat production provided by a Chinese slat producer that includes the step of boiling blocks of wood), and Attachment B (which contains a description of the submitted videos noting that slats are sliced from boiled blocks of wood). See also CFP-Three Star's January 22, 2007, submission containing a statement from a U.S. supplier of lumber used in pencil slat production, noting that it does not appear that Chinese slat producers either air dry or kiln dry the logs or lumber used to produce pencil slats.

²³ See the petitioners' January 5 and January 16, 2007, submissions, which include the above-referenced video as an attachment.

²⁴ See selected pages from the "Dry Kiln Operator's Manual," attached to CFP-Three Star's January 26, 2007, submission.

²⁵ See CFP-Three Star's January 16, 2007, submission.

this proceeding.²⁶ While CFP-Three Star relied on a statement from a manager of a Chinese pencil slat producer to support its claim that green lumber is used to make slats,²⁷ the petitioners note that missing from this statement is a description of what happens in the post-slicing phase of slat production, *i.e.*, the kiln-drying of slats. The petitioners point out that the statements they provided from Chinese slat producers indicate that slats are dried and, at least for one producer, are subject to secondary kiln drying.²⁸ Accordingly, the petitioners argue that the Department should continue to value slats using the price of kiln-dried lumber.

Department's Position:

We disagree with CFP-Three Star. Section 773(c)(1)(B) of the Act directs the Department to value factors of production in a non-market economy country using the best information available regarding the value of those factors in an appropriate market economy. In identifying the surrogates to be used to value factors of production, the Department's practice is to select surrogates that are "as similar as possible to the input for which a surrogate value is needed."²⁹ Here, the record contains statements from three Chinese pencil slat producers indicating that pencils slats, the input for which a surrogate is needed, are dried. The petitioners provided statements from two producers, one of whom identified "drying the slats" as one of its production steps, while the other producer referenced a video of Chinese slat production which includes air drying of slats, and, according to the producer, future secondary kiln drying. While CFP-Three Star did not report whether the pencil slats it purchased are green or dried,³⁰ it provided a statement from a PRC slat producer who identified open air drying as one of its production steps. Thus, the evidence indicates that slats used to produce pencils are dried. Given the record evidence, and the fact that the only surrogate prices on the record are prices for either green or kiln-dried wood, we have concluded that the best available information with which to value pencils slats is the price of kiln-dried wood.

²⁶ See Remand Determination at 8 stating that "{i}n order to determine the most appropriate slat valuation methodology, Commerce must identify the U.S. basswood product which most closely resembles that which was used by the respondent, China First."

²⁷ See statement from Mr. Liang Fu Chen, General Manager of Dunhua Fenglin Wood Processing Factory, provided in CFP-Three Star's January 16, 2007, submission.

²⁸ See statements of Mr. Qin and Mr. Fairbanks in Attachments A and B of the petitioners' January 5, 2007, submission, respectively. See also the statement of Mr. Fairbanks in Attachment A of the petitioners' January 16, 2007, submission.

²⁹ See CTL Plate From the PRC, 62 FR at 61987 and accompanying Issues and Decision Memorandum at Comment 29.

³⁰ Dried wood has a lower moisture content than green wood and can have advantages over green wood (*e.g.*, less shrinking, swelling, and warping; paint, varnishes and other finishes are more effectively applied and maintained). See CFP-Three Star's January 26, 2007, submission to the Department.

Comment 4: Whether the Department Used the Appropriate Surrogate Financial Ratios

CFP-Three Star argues that the Department should not have calculated surrogate financial ratios from the financial statements of Camlin Ltd. (Camlin), an Indian producer/reseller of consumer products (including writing instruments), chemicals, and pharmaceuticals. Rather, CFP-Three Star argues that the Department should have, as it has in the previous four reviews, calculated surrogate financial ratios from the financial statements of Asia Wood International Corp. (Asia Wood), a Filipino producer of wooden arts and crafts, and other small wooden products.

Citing the Department's regulations and past practice, CFP-Three Star notes that the Department typically calculates surrogate financial ratios using information from entities in the surrogate country that are producers of merchandise that is identical or comparable to subject merchandise (comparability being determined by comparing physical characteristics, end uses, and production processes of the products).³¹ Moreover, because the Department prefers to base surrogate financial ratios on information as specific to subject merchandise as possible, CFP-Three Star notes that the Department has often based surrogate financial ratios on producer- or industry-specific information rather than information from broad industry groupings.³²

Given the selection criteria expressed above, CFP-Three Star provides the following reasons for calculating financial ratios from Asia Wood's financial statements rather than Camlin's financial statements. First, CFP-Three Star contends that Asia Wood is a better choice than Camlin because its size is comparable to that of the respondents in this review and it produces small wooden manufactured articles which CFP-Three Star likens to pencils (e.g., small furniture, doors, cabinets, and handicrafts). Specifically, CFP-Three Star claims that a large portion of Asia Wood's products are comparable to pencils in terms of production processes and material inputs. On the other hand, CFP-Three Star characterizes Camlin as a huge conglomerate that produces a wide range of products (e.g., hundreds of consumer goods, fine chemicals and pharmaceuticals) of an entirely different character than that of pencils, some of which are produced using equipment entirely different from that used to produce pencils. In fact, CFP-

³¹ See 19 CFR 351.408(c)(4); see also Glycine from the People's Republic of China: Final Results of New Shipper Administrative Review, 66 FR 8383 (January 31, 2001) and accompanying Issues and Decision Memorandum at Comment 7.

³² See Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China, 65 FR 33805 (May 25, 2000), accompanying Issues and Decision Memorandum at Comment 7 (“{b}ecause we seek information that pertains as narrowly as possible to the subject merchandise, the Department, in most cases, has used the producer-specific data. . .”); see also Notice of Final Determination of Sales at Less Than Fair Value: Floor Standing, Metal Top Ironing Tables and Certain Parts Thereof From the People's Republic of China, 69 FR 35296, 35312 (June 24, 2004) (Ironing Tables) (“{t}he Department uses broader industry averages as published in the {Reserve Bank of India}(RBI) Bulletin when no usable financial data from producers of comparable merchandise are available.”).

Three Star likens Camlin's consolidated operations, involving several disparate industries, to the broad industrial groupings in the RBI data which the Department rejected as a source of financial ratios in Ironing Tables.

Second, while CFP-Three Star notes that Camlin's consumer products include writing instruments, it contends there is no definitive indication that Camlin produces pencils, nor is there any indication of the full scope of the products produced and sold by, rather than just sold by, Camlin. According to CFP-Three Star, it appears that any pencil production operations relating to Camlin are those of companies in which Camlin holds equity interests, but whose financial statements are not consolidated with those of Camlin.

Third, CFP-Three Star claims that Camlin's participation in the chemical and pharmaceutical sectors renders it an inappropriate source of surrogate financial data because it likely incurred greater research and development, marketing, and other costs due to those business segments than are incurred by pencil producers. See Camlin's 57th Annual Report describing a "momentous shift {in the pharmaceuticals industry} from manufacturing to R&D and sales and marketing." Thus, CFP-Three Star concludes that Camlin's research and development, marketing, and other costs improperly overstate the surrogate financial ratios for pencil producers.

Consequently, CFP-Three Star urges the Department to base its surrogate financial ratios on data from Asia Wood, a wood-based manufacturer located in the Philippines, a country which the Department considers to be comparable to the PRC in terms of economic development.

The petitioners, however, argue that the Department should continue to calculate financial ratios from Camlin's data because Camlin meets the Department's primary criterion for selecting surrogate financial data – it produces merchandise that is identical to the subject merchandise. See 19 CFR 351.408(c)(4). The petitioners note that in Artist Canvas, the Department based surrogate financial ratios on Camlin's data, rather than data from a producer of merchandise comparable to the subject merchandise, because Camlin produced artist canvas.³³ Moreover, the petitioners point out that the Department selected Camlin in Artist Canvas, regardless of the fact that the company produced merchandise other than the subject merchandise.³⁴

Furthermore, the petitioners find CFP-Three Star's reliance on Ironing Tables to be misplaced.

³³ See Final Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China, 71 FR 16116 (March 30, 2006) (Artist Canvas) and accompanying Issues and Decision Memorandum at Comment 3.

³⁴ See Artist Canvas and accompanying Issues and Decision Memorandum at Comment 3 ("the fact that {Camlin} might also produce other products does not warrant moving away from relying on its financial statement in favor of a producer that makes less similar products").

The petitioners maintain that, unlike the choice before the Department in the instant review, in Ironing Tables, the Department chose between RBI data that covered a broad industry grouping, and data from a producer of merchandise comparable, not identical, to subject merchandise. In the instant review, the petitioners state, the Department has record information concerning a producer of merchandise identical to subject merchandise – namely information from Camlin.

Lastly, the petitioners point out that Asia Wood does not produce pencils. Although CFP-Three Star asserts that the processes employed by Asia Wood to produce furniture, doors and cabinets are similar to those used to produce pencils, the petitioners note that there is nothing on the record regarding Asia Wood's production processes. According to the petitioners, the lack of information regarding Asia Wood's production processes and material inputs precludes a comparison with pencil producers.

While the Department based surrogate financial ratios on Asia Wood's financial statements in prior reviews, the petitioners contend this was done for lack of better information – information which the Department now has. Therefore, the petitioners believe the Department should base CFP-Three Star's financial ratios on Camlin's financial statements.

Department's Position:

We disagree with CFP-Three Star, and have continued to use Camlin's financial data as the surrogate value source for manufacturing overhead, general expenses, and profit. Section 773(c)(1)(B) of the Act states that factor values "shall be based on the best available information regarding the values of such factors in a market economy or countries considered to be appropriate by the administering authority." Additional guidance regarding surrogate values for manufacturing overhead, general expenses, and profit is provided by 19 CFR 351.408(c)(4), which states that these values will normally be based on public information from companies that are in the surrogate country and that produce merchandise that is identical or comparable to the subject merchandise.³⁵ While there is no evidence that Asia Wood produces pencils, there is evidence suggesting that Camlin may produce pencils. Specifically, Camlin's financial statements note that: (1) the company's consumer products line includes writing instruments;³⁶

³⁵ See, e.g., Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 66 FR 42628 (August 14, 2001) and accompanying Issues and Decisions Memorandum, at Comment 5; see also Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form from the People's Republic of China, 66 FR 49345 (September 27, 2001) and accompanying Issues and Decisions Memorandum, at Comment 3; see also Heavy Forged Hand Tools From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Determination Not To Revoke in Part, 66 FR 48026 (September 17, 2001) and accompanying Issues and Decision Memorandum at Comment 18.

³⁶ See Camlin's 2003-2004 Annual Report at 9 in Exhibit 14 of the memorandum to the file from PRC Pencils Team, titled, 2004-2005 Antidumping Duty Administrative Review of

(2) the company is a manufacturer of consumer products (noting art materials and stationery);³⁷ (3) based on value, wooden pencils are one of the principal products of the company;³⁸ (4) the company operates a wooden pencil slat making and seasoning plant which should “enable the Company to improve quality and price realisation of the pencils”;³⁹ and, (5) the company lists “Slats/Leads” among the raw materials consumed (noting that resold materials comprise some of the value of the raw materials consumed).⁴⁰ Although CFP-Three Star argues that Asia Wood is a better choice than Camlin because a large portion of Asia Wood’s products are comparable to pencils in terms of production processes and material inputs, there is no information on the record regarding the manufacturing processes employed, or the types of raw materials purchased, by Asia Wood.

Furthermore, despite CFP-Three Star’s speculation that certain of Camlin’s associated companies (i.e., companies in which Camlin holds an interest), whose operating results are not consolidated with those of Camlin, are actually the pencil producers; the record does not indicate that the pencils sold by Camlin were produced by these companies, rather than Camlin. While Camlin purchased certain goods and received certain services from the associated companies Excella Pencils Ltd. and Triveni Pencils Ltd., the types of goods and services provided by these companies are not identified.⁴¹

Moreover, contrary to CFP-Three Star’s claim that there is no indication of the scope of the products produced (as opposed to sold) by Camlin, the company’s 2003-2004 Annual Report indicates that the company manufactured, rather than purchased, a material amount, by quantity, of the stationery items obtained in fiscal year 2003-2004.⁴²

Additionally, given the record evidence indicating that Asia Wood produces products less similar to subject merchandise than Camlin, the fact that Camlin produces and sells merchandise other than pencils does not preclude its use as a surrogate source for financial ratios. In Artist Canvas, the Department stated that “the fact that {Camlin} might also produce other products does not

Certain Cased Pencils from the People’s Republic of China: Surrogate Values for the Preliminary Results, dated December 1, 2006.

³⁷ See Camlin’s 2004-2005 Annual Report at 6.

³⁸ See Camlin’s 2003-2004 Annual Report at 43.

³⁹ Id. at 5.

⁴⁰ Id. at 41.

⁴¹ Id. at 37 and 38.

⁴² Id. at 40. The “Stationery Items” category of products listed on the spreadsheet undoubtedly includes pencils given that pencils are a principal product of Camlin and the only other categories of products listed on the spreadsheet are chemicals and pharmaceuticals.

warrant moving away from relying on its financial statement in favor of a producer that makes less similar products.”⁴³ Further, the record calls into question CFP-Three Star’s claim that Camlin’s research and development, marketing and other costs may improperly overstate the surrogate financial ratios. Camlin’s fiscal year 2003-2004 research and development costs, including capital expenditures, only represent approximately two percent of Camlin’s manufacturing overhead, selling, general and administrative (SG&A) expenses, and interest expenses.⁴⁴ In addition, it is not clear that Camlin’s chemical and pharmaceutical segments are necessarily the major contributors toward Camlin’s “large” advertising and sales promotion expenses. Camlin’s 2003-2004 Annual Report indicates that “{t}he Company is taking special efforts in the international markets to promote the products particularly in the range of colours and writing instruments. . .”⁴⁵ The Annual Report also notes that “{s}pecial efforts are being taken to improve market share of writing instruments.”⁴⁶ Moreover, CFP-Three Star has not supported its claim that certain other expenses on Camlin’s profit and loss statement (e.g., miscellaneous expenses and interest and finance charges) primarily result from Camlin’s chemical and pharmaceutical segments.

Based on the foregoing, we have determined that Camlin’s financial data constitute the best information available on the record with which to value manufacturing overhead, SG&A, and interest expenses.⁴⁷ Therefore, for the final results of this review, we calculated financial ratios for CFP-Three Star using Camlin’s financial data.

Comment 5: Whether the Department Properly Accounted for Labor-Related Expenses in Calculating Financial Ratios

If the Department continues to base the surrogate financial ratios on Camlin’s financial statement, CFP-Three Star argues the Department should recalculate those ratios by including Camlin’s labor-related expenses⁴⁸ as part of the direct labor expenses in the denominator of those ratios rather than as part of the expenses in the numerator of those ratios. CFP-Three Star argues

⁴³ See Artist Canvas and accompanying Issues and Decision Memorandum at Comment 3.

⁴⁴ See Camlin’s 2003-2004 Annual Report at 8 and the Department’s Calculation Memorandum.

⁴⁵ See Camlin’s 2003-2004 Annual Report at 9.

⁴⁶ Id. at 10.

⁴⁷ In previous segments of this proceeding in which the Department based the surrogate financial ratios on Asia Wood’s data, the record did not contain financial data for companies engaged in production related to pencils.

⁴⁸ The labor-related expenses at issue are Camlin’s staff and labor welfare expenses, and contributions to the provident, superannuation, and other funds.

for this approach because it claims the surrogate labor rate used by the Department includes labor-related expenses. Specifically, CFP-Three Star claims that worker's earnings from Chapter 5 of the International Labour Organization's Yearbook of Labour Statistics, the data on which the Department bases its surrogate labor rate, reflects gratuities, bonuses, and staff welfare related expenses. See the Preamble to Chapter 5 of the Yearbook of Labour Statistics. Moreover, CFP-Three Star claims the CIT recognized that Chapter 5 data include provident fund and staff welfare costs when it stated that “{t}he data in Chapter 5 provides the most comprehensive wage rates since such figures include overtime, bonuses and gratuities, holiday pay, pay for piecework, and cost-of-living allowances.” See Luoyang Bearing Corp. v. United States, 347 F. Supp. 2d 1326, 1334 (May 18, 2004) (Luoyang). Consequently, CFP-Three Star argues that excluding labor-related expenses from the direct labor costs used in the financial ratios is unlawful because it is based on an unsupported conclusion that such expenses are not reflected in the Department's surrogate labor rate, a conclusion that is at odds with the court's decision in Luoyang.

CFP-Three Star further contends that Luoyang indicates the Department will include labor-related expenses in overhead or SG&A expenses (expenses that make up the numerator of the financial ratios) only when the Department is “presented with *specific and undisputed evidence {demonstrating} that additional expenses were incurred by employers in the PRC.*” Id. (emphasis CFP-Three Star). CFP-Three Star argues that, in this review, there is no evidence that it incurred additional labor-related expenses. Hence, CFP-Three Star maintains that the Department should include Camlin's staff and labor welfare expenses, and contributions to the provident, superannuation, and other funds as part of the direct labor expenses in the denominator of the financial ratios.

The petitioners contend that CFP-Three Star's argument, which the Department has previously rejected, is based on a misreading of the International Labour Organization's data. According to the petitioners, in wooden bedroom furniture from the PRC, the Department found that earnings data from Chapter 5 of the Yearbook of Labour Statistics are “exclusive of employee benefits such as pension and social security.”⁴⁹ Thus, the petitioners point out that the Department concluded in that case that “classifying the relevant employee benefits categories as factory overhead is consistent with our regression-based expected PRC wage rate calculation.” Id. The petitioners state that the Department has reached this same conclusion in three other antidumping

⁴⁹ See Wooden Bedroom Furniture from the People's Republic of China: Final Results of the 2004-2005 Semi-Annual New Shipper Reviews, 71 FR 70739 (December 6, 2006) and accompanying Issue and Decision Memorandum (Bedroom Furniture Decision Memorandum) at Comment 12.

duty proceedings.⁵⁰ Accordingly, the petitioners contend that labor costs were appropriately included as an overhead item in the Department's surrogate financial ratios.

Department's Position:

We disagree with CFP-Three Star for several reasons and have continued to apply the surrogate financial ratios calculated using Camlin's financial data for manufacturing overhead, general expenses, and profit without making further adjustments for certain labor expenses. As an initial matter, we find it appropriate to continue to classify certain labor-related expenses (i.e., staff and labor welfare expenses, and contributions to the provident, superannuation, and other funds) as manufacturing overhead, rather than direct labor, because this approach is consistent with recent Department practice. See Bedroom Furniture Decision Memorandum, at Comment 12 (“{c}onsistent with recent Department practice, we classified “salary & other benefit to staff,” “ESI expenses” “Provident fund expenses,” and “staff welfare” as manufacturing overhead. .”).⁵¹

Additionally, we disagree with CFP-Three Star's argument because it is based, in part, on the incorrect assertion that the surrogate labor rate used by the Department (i.e., the regression-based expected PRC wage rate) includes labor-related expenses. The Department's regression-based expected PRC wage rate is calculated from data in Chapter 5B of the Yearbook of Labour Statistics. According to the yearbook, Chapter 5B wages “exclude employers' contributions in respect of their employees paid to social security and pension schemes and also the benefits received by employees under these schemes.”⁵² Moreover, contrary to CFP-Three Star's claim, in Luoyang, the CIT recognized that the types of labor-related expenses at issue here are not included in the Department's regression-based PRC wage rate, noting that “Commerce. . . added

⁵⁰See Persulfates From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 71 FR 7725 (February 14, 2006) and accompanying Issues and Decision Memorandum at Comment 3; Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 71 FR 2905 (January 18, 2006) (2003-2004 Folding Metal Tables and Chairs from the PRC) and accompanying Issues and Decision Memorandum at Comment 1B; and, Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China, 71 FR 29303 (May 22, 2006) and accompanying Issues and Decision Memorandum at Comment 6.

⁵¹ See also Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716, 61721 (October 19, 2006) (“it is the Department's practice to categorize all individually identifiable labor costs not included in the {International Labour Organization's} definition of “earnings” under Chapter 5 of the Yearbook of Labour Statistics as overhead expenses.”).

⁵² See Bedroom Furniture Decision Memorandum at Comment 12 citing <http://laborsta.ilo.org/>.

provident and welfare fund expenses to its valuation of labor specifically because these two types of expenses *are not expressly included in Chapter 5 data*".⁵³

Furthermore, we disagree with CFP-Three Star's claim that, based on Luoyang, the Department includes labor-related expenses in overhead only when the evidence shows these expenses were incurred by PRC employers. In the administrative review contested in Luoyang, the Department stated the following:

Moreover, in valuing labor, we are *not looking for the types of expenses incurred by employers in the PRC*. Instead, we are attempting to calculate the costs that the PRC producer would incur if its factory were located in India. The financial statements of the Indian producers of TRBs clearly indicate that these labor costs {employer welfare and provident fund expenses} would be incurred in addition to wages.⁵⁴

The CIT upheld the Department's approach noting that "Commerce added such expenses {i.e., provident and welfare fund expenses} in order to calculate the costs that the PRC producer would incur *if its factory were located in the surrogate country, India as accurately as possible*".⁵⁵

Similarly, in the instant review, the Department's goal is to calculate costs that the respondent would incur if its factory were located in the surrogate country, India. Camlin is located in India and its financial statement clearly indicates it incurs expenses for staff and labor welfare expenses, and contributions to the provident, superannuation, and other funds. Given the foregoing, we have continued to include staff and labor welfare expenses, and contributions to the provident, superannuation, and other funds in the manufacturing overhead expenses, rather than the direct labor expenses, used to calculate the financial ratios.

Comment 6: Whether the Department Used an Appropriate Labor Rate

CFP-Three Star contends the Department should base labor costs on a published wage rate, rather than its regression-based wage rate, because the Department's regression methodology is inconsistent with the statute and produces distorted results. Elaborating on these allegations, CFP-Three Star explains that the regression analysis is inconsistent with the statute because it uses data from countries that are not at a level of economic development comparable to the PRC and for which there is no evidence that the country is a significant producer of merchandise comparable to the subject merchandise. See section 773(c)(4) of the Act. On the matter of distortion, CFP-Three Star points to the following examples of distortion in the regression-based

⁵³ See Luoyang, 347 F. Supp. 2d at 1346 (emphasis added).

⁵⁴ See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1998-1999 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part, 66 FR 1953 (January 10, 2001) and accompanying Issues and Decision Memorandum at Comment 7 (emphasis added).

⁵⁵ See Luoyang, 347 F. Supp. 2d at 1346 (emphasis added).

calculation used in the Preliminary Results (which relied upon 2003 data): (1) for each country that is economically comparable to the PRC, the wage rates predicted by the regression analysis are significantly higher than the actual the wage rates in the country (e.g., the predicted wage rate for a country with India's per-capita gross national income (GNI) is almost 300 percent greater than India's actual wage rate); (2) of the 30 countries used in the regression analysis that have a GNI less than US \$10,000, only five have actual wage rates that are higher than the wage rates predicted by the regression analysis; and, (3) the regression analysis predicts a wage of \$0.40/hour for a country with a GNI of zero. CFP-Three Star notes that in a recent CIT case, the court also found that the Department's regression analysis produced distorted results.⁵⁶ While CFP-Three Star believes that the most recently calculated regression-based wage rate, which relies on 2004 data, is less distorted than the regression-based calculation used in the Preliminary Results, it contends that the more recent calculation suffers from some of the same distortions noted above.

Furthermore, CFP-Three Star argues that the regression-based wage rate used in the Preliminary Results runs contrary to legal precedent. CFP-Three Star notes that in Dorbest, the CIT found the Department's exclusion of certain countries' wage rate data from its regression analysis (the same analysis relied upon in the Preliminary Results) to be arbitrary and unreasonable since those countries met the Department's own criteria for selecting data to be used in its regression analysis. Given the CIT's finding, CFP-Three Star argues the wage rate used in the Preliminary Results should be considered suspect and biased and, thus, it must be rejected.

Based on the foregoing, CFP-Three Star maintains the Department should value labor using (U.S. dollar (USD) 0.13/hour), the country-wide wage rate for India that is for a period as close in time to the POR as possible. CFP-Three Star contends the Department should use this rate because the Department found India to be economically comparable to the PRC, as well as a significant producer of merchandise comparable to the subject merchandise, and India has been used as the primary surrogate country in this review.

Alternatively, if the Department rejects the above arguments, CFP-Three Star urges the Department to value labor using the most recently calculated regression-based wage rate, which relies on 2004 data. CFP-Three Star argues for the use of 2004 data because the data cover a period closer in time to the POR, countries more consistent with the Department's announced data selection criteria, and produce results that, while distorted, are less distorted than the results produced using 2003 data. In addition, CFP-Three Star notes that the Department recently acknowledged that its regression-based wage rate based upon 2003 data is incorrect. Thus, regardless of the Department's stated intention to only use the regression-based 2004 wage rate after allowing for a comment and decision period, CFP-Three Star contends that rate should be used in this review, rather than the regression-based 2003 wage rate.

⁵⁶ See Dorbest Ltd., et al. v. United States, 462 F. Supp. 2d 1262 (October 31, 2006) (Dorbest).

The petitioners refute CFP-Three Star's arguments, stating that the Department has (1) determined its current methodology constitutes the best available information for valuing labor⁵⁷ and (2) has consistently rejected the notion that it should revise its surrogate wage rate methodology on a case-by-case basis.⁵⁸ Thus, the petitioners argue that the wage rate used in the Preliminary Results should be used in the final results as well.

Department's Position:

We disagree with CFP-Three Star's position, in part. Contrary to CFP-Three Star's claim, the results of the Department's regression analysis are consistent with the statute for the following reasons. Under section 773(c)(4) of the Act, factors of production are valued, to the extent possible, using values from surrogate countries (*i.e.*, countries that are both economically comparable to the non-market economy country, and significant producers of merchandise that is comparable to subject merchandise). Consistent with this provision, the Department's regression formula, when applied to the non-market country's GNI, enables the Department to determine the labor wage rate of a market economy country at a level of development comparable to that of the non-market economy country. The CIT recognized this fact in Dorbest, noting that "Commerce's calculation, at least in theory, produces a hypothetical wage rate for the PRC, which is therefore by definition a wage rate for a producer country at a comparable level of development, as required by {section 773(c)(4) of the Act}."⁵⁹

With regard to the need to base wage rates on countries that are significant producers of subject merchandise, we note that the statute gives the Department discretion in valuing factors of production. Specifically, section 773 (c)(1)(B) of the Act states that factor values "shall be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority." With respect to this statutory provision, the United States Court of Appeals Federal Circuit noted:

While {section 773 (c) of the Act} provides guidelines to assist Commerce in this process, this section also accords Commerce wide discretion in the valuation of factors

⁵⁷ See Folding Metal Chairs and Tables from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 71 FR 71509 (December 11, 2006) and accompanying Issues and Decisions Memorandum at Comment 11, and 2003-2004 Folding Metal Tables and Chairs from the PRC and the accompanying the Issues and Decision Memorandum at Comment 3.

⁵⁸ See Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of the 2004/2005 New Shipper Review, 71 FR 66304 (November 14, 2006) and accompanying Issue and Decision Memorandum at Comment 2 ("{a} single wage rate across proceedings is required by our regulations, and applying an altered methodology in this single proceeding would contravene the direction set forth in 19 CFR 351.408(c)").

⁵⁹ See Dorbest, 462 F. Supp. 2d at 1293.

of production in the application of those guidelines.” Citing Nation Ford Chem. Co. v. United States, 166 F.3d 1373, 1377 (Fed. Cir. 1999).⁶⁰

Exercising its discretion in selecting the best available information with which to value labor, the Department has determined that in its regression analysis it is “appropriate to place less weight on the significant producer criterion because economic comparability is more indicative of appropriate labor rates.”⁶¹ Moreover, in Honey from the PRC, the Department noted that “it did not contemplate that all countries collectively used in the . . . regression analysis. . . would be required to be significant producers of comparable merchandise. . . .”⁶² The Department went on to note that the existence of a labor market in every economy “obviates the necessity that the included countries be significant producers of the product under investigation or review.”⁶³

Furthermore, we disagree with CFP-Three Star’s claim that the Department’s regression analysis produces distorted results. It is important to note that the Department’s regression-based methodology is used to estimate wage rates based on a country’s GNI and no estimation methodology can ever produce perfect wage rates. As with any estimate based on a pool of data, some data points will fall above the estimate, and some data points will fall below the estimate. Examining the results of the Department’s regression-based methodology using 2004 data shows the following: (1) the wages predicted for 23 of the 58 countries included in the model lie *above* the regression line, *i.e.*, the regression line “underestimates” these wage rates; (2) even confining the analysis to those economies classified by the World Bank in 2004 to be low-income economies (USD 825 or less) and lower-middle income economies (between USD 825 and USD 3,255), *i.e.*, the two classifications that encompass all of the economies identified by the Department as non-market economies, seven out of 16 wage rates fall above the regression line (are “underestimated”).⁶⁴ This indicates that the Department’s regression-based methodology does not distort or systematically overestimate general wage rates or the wage rates of lower income countries. Rather, the regression line serves to smooth out the differences in the reported wage rates. Focusing on selected data points, such as the data for India, can lead to an appearance of distortion when there is none.

⁶⁰ See Shakeproof Assembly Components, Division of Illinois Tool Works, Inc. v. United States, 268 F.3d 1376, 1381 (October 12, 2001).

⁶¹ See Antidumping Duties; Countervailing Duties, 62 FR 27295, 27367 (May 19, 1997) (Preamble).

⁶² See Honey from the People’s Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review, 71 FR 34893 (June 16, 2006) (Honey) and accompanying Issues and Decision Memorandum at Comment 5.

⁶³ Id.

⁶⁴ See Calculation Memorandum at Attachment IV.

Likewise, it is not instructive to focus on data points outside of the relevant universe. CFP-Three Star argues that the Department's analysis produces distorted results because it predicts a wage of \$0.40/hour for a country with a GNI of zero. The regression line, however, is not meant to be used to predict wage rates for countries with zero GNI, as no such country exists. It is not appropriate to question the validity of the regression analysis based on a hypothetical scenario that the analysis was not meant to address. Moreover, attempting to adjust the regression line to account for such a hypothetical scenario (e.g., so that it predicts a zero wage rate for a country with zero GNI) would only distort the regression analysis which is based on sound, actual data.

In addition, it would be inappropriate to base the labor rate on a single surrogate value, as suggested by CFP-Three Star. Besides contravening the Department's regulations, this proposal would lead to highly variable results, which would undermine the accuracy, fairness and predictability of the Department's calculations. As the Department has previously noted, while there is a strong positive correlation between wage rates and GNI, "there is great variation in the wage rates of the market economy countries that the Department typically treats as being economically comparable."⁶⁵ The Department is able to avoid this variability through its regression-based wage rate methodology because of the availability of reliable wage rate data and the consistent relationship between wage rates and GNI over time. Under the Department's regression-based methodology, the value for labor will be the same in every proceeding involving a given nonmarket economy. This enhances the fairness and predictability of the Department's calculations.

Therefore, in these final results of review, we have continued to value labor using a regression-based analysis. Nonetheless, we agree with CFP-Three Star that the labor rate should be based on the most recently calculated regression-based wage rate, which relies on 2004 data, rather than 2003 data. The most recently calculated rate addresses the concern expressed by the CIT in Dorbest because it is based on data from an expanded basket of countries.⁶⁶ Moreover, the Department's website states that "the expected NME wages based on 2004 GNI will be used by the Department in all segments of all NME proceedings for which the final determination is due on or after February 16, 2007." See <http://ia.ita.doc.gov/wages/04wages/04wages-010907.html>. Accordingly, we have used the wage rate based on 2004 data in these final results of review.

Comment 7: Whether the Department Used an Appropriate Surrogate Value for Brokerage and Handling Services

In the Preliminary Results, the Department valued brokerage and handling services using an average of the brokerage and handling expenses reported by two Indian companies, (Essar Steel and Pidilite), in two different antidumping duty cases. CFP-Three Star argues that the Pidilite data should not be used to value brokerage and handling services because the data are

⁶⁵ See Proposed Rules – Antidumping Duties; Countervailing Duties, 61 FR 7307, 7345 (February 27, 1996).

⁶⁶ See Dorbest, 462 F. Supp 2d at 1295.

aberrant (Pidilite's average brokerage and handling expense is many times greater than that of Essar Steel) and not contemporaneous with the POR.⁶⁷ CFP-Three Star notes that the Department recently rejected the Pidilite data in another case because they were not contemporaneous.⁶⁸ CFP-Three Star suggests basing the surrogate value for brokerage and handling on the following values it submitted to the Department: (1) the average of the Essar Steel costs used by the Department in the Preliminary Results, and costs reported by Agro Dutch Industries in the 2004-2005 antidumping duty administrative review of mushrooms from India (this average was recently used by the Department in the antidumping proceeding involving freshwater crawfish tailmeat from the PRC); (2) costs submitted by Premier Mushroom Farms in the 2003-2004 antidumping duty administrative review of mushrooms from India; and, (3) costs submitted by Kejriwal Paper Co. in the antidumping duty investigation of lined paper from India. CFP-Three Star contends that the brokerage and handling costs from the sources listed above cover a period closer to the POR than the Pidilite costs and demonstrate that Pidilite's brokerage and handling costs are aberrant.

The petitioners, however, note that the Department previously rejected an argument that the Pidilite data are aberrant, finding the average of those data and data from Essar Steel represents "the broad spectrum of values that are available for a wide a range of products." See Artist Canvas and accompanying Issues and Decision Memorandum at Comment 2. The petitioners also note that, in another case, the Department rejected an argument that compared to other available data, the Pidilite data are not contemporaneous, finding the data were sufficiently contemporaneous and that their quality and specificity supported their use. See Honey and accompanying Issues and Decision Memorandum at Comment 4. Finally, the petitioners contend that comparing the Pidilite data to a small set of respondent-selected low brokerage and handling costs, rather than country-wide (i.e., average or normal) brokerage and handling costs, does not provide a basis for finding the data to be aberrant.

Department's Position:

Section 773(c)(1) of the Act states that "the valuation of the factors of production shall be based on the best available information regarding the values of such factors. . .". In choosing the most appropriate surrogate value from publicly available information, the Department's practice is to consider several factors, including the quality, specificity, and contemporaneity of the data.⁶⁹ All

⁶⁷ While the Essar Steel data are also not contemporaneous, CFP-Three Star argues, they are more current than the Pidilite data.

⁶⁸ See Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Final Results of New Shipper Reviews, 71 FR 26329 (May 4, 2006) and accompanying Issues and Decision Memorandum at Comment 6.

⁶⁹ See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079 (September 8, 2006) and accompanying Issues and Decision Memorandum

of the surrogate values for brokerage and handling that are on the record are publicly available, of comparable quality (they are all from public versions of responses filed by Indian respondents in antidumping cases) and not specific to the subject merchandise. However, two of those values, the brokerage and handling costs incurred by Agro Dutch Industries and Kejriwal Paper Co., cover periods that overlap the instant POR. The other three brokerage and handling values on the record cover periods ending one to 15 months before the instant POR. Given that the values of Agro Dutch Industries and Kejriwal Paper Co. are superior to the other values on the record in terms of contemporaneity (both covering periods that overlap the instant POR), but neither is specific to the subject merchandise, we valued brokerage and handling services using the simple average of the per-unit brokerage and handling costs reported for Agro Dutch Industries and Kejriwal Paper Co.

Comment 8: Whether the Department Used an Appropriate Surrogate Value for Paper Wrap

CFP-Three Star argues that the Department erred by valuing paper wrap (a decorative, non-adhesive paper that is wrapped around a pencil shaft) using a value for sealed paper. CFP-Three Star notes that it reported that it wraps foil or paper around the shaft of pencils, which are then passed through a heating element to permanently affix the foil or paper to the pencils. Based on this description of its production process, CFP-Three Star contends that foil and paper are essentially two different forms of the same material and, thus, the Department should value paper wrap using the surrogate value used for foil.

The petitioners urge the Department to continue to use sealing paper as the surrogate for paper wrap because: (1) CFP-Three Star acknowledged that it uses paper wrap; (2) paper wrap more closely resembles the input used; and, (3) CFP-Three Star did not support its assertion that paper wrap is identical to foil.

Department's Position:

We disagree with CFP-Three Star's position and have continued to use the surrogate value for paper wrap that we used in the Preliminary Results. CFP-Three Star did not provide any record information demonstrating that foil and paper wrap are essentially two different forms of the same material. Simply because CFP-Three Star applies foil and paper wrap to pencils using the same production process does not necessarily indicate that these two materials are essentially the same material, meriting the same surrogate value. Moreover, CFP-Three Star reported foil and paper wrap as two different inputs. Because CFP-Three Star has failed to provide any credible evidence that foil and paper wrap are the same material, we have continued to use sealing paper to value paper wrap.

at Comment 1; see also Brake Rotors From the People's Republic of China: Final Results of the Twelfth New Shipper Review, 71 FR 4112 (January 25, 2006) and accompanying Issues and Decision Memorandum at Comment 2.

Comment 9: Selection of the Appropriate Rate to Assign to a Separate Rate/Section A Respondent

Although a number of exporter/producers, including Dixon, requested to be reviewed in the instant segment of this proceeding, the Department only selected CFP-Three Star as a mandatory respondent.⁷⁰ However, because Dixon qualified for a separate rate in this review, the Department noted in its Preliminary Results that it would base Dixon's dumping margin on any mandatory respondents' dumping margins "which are not de minimis or based on adverse facts available, in accordance with Department practice."⁷¹

Dixon argues that if the dumping margin calculated for CFP-Three Star is de minimis in the final results of review, it should be assigned a de minimis dumping margin. Dixon notes that it was assigned CFP-Three Star's dumping margin in the Preliminary Results, and should continue to receive that margin, even if it is de minimis, because that rate represents the best information available to estimate the dumping margin for other Chinese companies.⁷² Alternatively, Dixon argues that the Department could adopt an approach similar to that adopted in a redetermination in non-frozen apple juice concentrate from the PRC and derive its dumping margin by comparing its average U.S. sales prices to CFP-Three Star's public ranged average normal values for the type of pencils that Dixon sold in the U.S. market during the POR.⁷³

The petitioners did not comment on this issue.

Department's Position:

CFP-Three Star's dumping margin is above de minimis. Therefore, we have not addressed this issue.

⁷⁰ See Preliminary Results, 71 FR at 70950.

⁷¹ Id. at 70955 citing Notice of Final Determinations of Sales at Less Than Fair Value: Brake Drums and Brake Rotors From the People's Republic of China, 62 FR 9160, 9174 (February 28, 1997).

⁷² Dixon points out that its request for review was denied because the Department determined that its resources were limited.

⁷³ See Redetermination Pursuant to Court Order: Yantai Oriental Juice Co., et al. v. United States and Coloma Frozen Foods, Inc., et al., Court No. 00-00309 (May 5, 2003).

Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of this review and the final weighted-average dumping margins for the reviewed firms in the Federal Register.

Agree

Disagree

David M. Spooner
Assistant Secretary
for Import Administration

Date